In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-762

BETTY RUTH STANLEY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that conversations recorded as a result of a wire interception should have been suppressed.

Following a non-jury trial in the United States District Court for the Northern District of Georgia, petitioners were convicted of conspiring to engage in and engaging in an illegal gambling operation, in violation of 18 U.S.C. 371 and 1955. Petitioners were sentenced as follows: Betty Ruth Stanley, three months' imprisonment and a probation term of 33 months; Mary Ann Sheffield, Sandra Elaine Ashley, and Joseph Thomas Wilson, six months' imprisonment and a probation term of 30 months; Hudson Ashley, ten years' imprisonment and a $10,000 fine; and Lloyd Dean Sheffield, three years' imprisonment. The court of appeals affirmed without opinion (Pet. App. 1a).

At trial, the government introduced portions of intercepted telephone conversations which incriminated petitioners. The intercept had been conducted pursuant to an order of a district judge obtained upon an application signed by Acting Assistant Attorney General Henry Petersen. The application had been personally reviewed by Attorney General John Mitchell, however, and, as petitioners admit (Pet. 3), the Attorney General had approved the application by a signed memorandum.

Petitioners nonetheless contend that the evidence obtained by the interception should be suppressed.[1] But since it is undisputed that the Attorney General actually authorized the application at issue here, it cannot be said that there was a "failure to satisfy any of those statutory requirements that directly and substantially implement the congressional intention to limit the use of intercept procedures * * *." *United States* v. *Giordano*, 416 U.S. 505, 527. In *United States* v. *Chavez*, 416 U.S. 562, 571-572, the Court said:

> Failure to correctly report the identity of the person authorizing the application * * * when in fact the Attorney General has given the required preliminary approval to submit the application, does not represent a similar failure [as in *Giordano*] to follow Title III's precautions * * *.
>
> * * * Where it is established that responsibility for approval of the application is fixed in the Attorney General * * * compliance with the screening

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[1]Review of the same contention was declined in *Vigi* v. *United States*, No. 75-101, certiorari denied, October 20, 1975. See also *Joseph* v. *United States*, No. 75-600, *Ganem* v. *United States*, No. 75-611, and *Lawson* v. *United States*, No. 75-659, petitions for writs of certiorari pending in which this issue is also raised.

requirements of Title III is assured, and there is no justification for suppression.[2]

See *United States* v. *Robertson*, 504 F.2d 289 (C.A. 5), certiorari denied, 421 U.S. 913 (cited by the court of appeals (Pet. App. 1a)).[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1976.

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[2]Although it is not material to the disposition of this case, we do not agree with petitioners' premise that an Acting Assistant Attorney General may not, when specially designated under 18 U.S.C. 2516(1), lawfully authorize an application for an intercept order. Cf. *United States* v. *Pellicci*, 504 F.2d 1106 (C.A. 1), certiorari denied, 419 U.S. 1122.

[3]In *Robertson*, the Fifth Circuit considered the identical issue that is raised in the instant case. It correctly concluded (504 F.2d at 292) that "the congressional intent is satisfied when the head of the Justice Department personally reviews the proposed application and determines that the situation is appropriate for employing this extraordinary investigative measure."